

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARIA KOUTSOUKOS,

Plaintiff,

Case No. 1:15-cv-816

v

HON. JANET T. NEFF

ADECCO USA, INC. et al.,

Defendant.

/

OPINION AND ORDER

Pending before the Court is Plaintiff's Motion to Set Aside Order of Dismissal and Leave to File Affidavit of Proof of Service (Dkt 7). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that:

- (1) the Order of Dismissal (Dkt 6) be set aside, that the affidavit regarding service (Dkt 8) be accepted as filed, and that Defendants be considered served as of the date of acceptance of the Report and Recommendation; and
- (2) Plaintiff be strongly warned that additional failure to comply with the Court's orders and rules may be grounds for dismissal of her case with prejudice.

The matter is presently before the Court on Defendant Michigan Education Association's (MEA) Objection to the Report and Recommendation (Dkt 11). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made, and finds the Objection without merit.

The MEA argues that the Magistrate Judge erred in recommending that the Order of Dismissal be set aside because Plaintiff failed to demonstrate mistake, inadvertence, surprise, or excusable neglect under FED. R. CIV. P. 60(b)(1). However, the Magistrate Judge properly considered the basis for this Court's dismissal without prejudice—Plaintiff's failure to show that she timely served Defendants, and her basis for setting aside the Dismissal Order. The Magistrate Judge found that it was clear that Defendants were served, a conclusion which the MEA does not dispute (Dkt 11 at PageID.41). The Magistrate Judge properly determined that the dismissal should be set aside under the circumstances, with an admonishment to Plaintiff that her case may be dismissed if she subsequently fails to comply with an order of the Court. The MEA's Objection is denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Therefore:

IT IS HEREBY ORDERED that the Objection (Dkt 11) is DENIED and the Report and Recommendation (Dkt 10) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Set Aside Order of Dismissal (Dkt 7) is GRANTED; the Order of Dismissal (Dkt 6) is set aside; the Clerk shall accept the affidavit regarding service (Dkt 8) as filed; and Defendants are considered served as of the date of this Opinion and Order.

IT IS FURTHER ORDERED that Plaintiff is **strongly warned** that additional failure to comply with the Court's orders and rules may be grounds for dismissal of her case with prejudice.

Dated: March 7, 2016

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge